

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
RON ZYLSTRA d.b.a. ZYLSTRA )  
CONSTRUCTION, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 837

FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$100 civil penalty for an  
alleged airborne particulate violation of respondent's Regulation I;  
having come on regularly for formal hearing before the Pollution  
Control Hearings Board on the 5th day of September, 1975, at  
Seattle, Washington; and appellant Ron Zylstra d.b.a. Zylstra  
Construction appearing pro se and respondent Puget Sound Air Pollution  
Control Agency appearing through its attorney, Keith D. McGoffin;  
and Board members present at the hearing being Chris Smith and Walt  
Woodward and the Board having considered the sworn testimony,

1 exhibits, records and files herein and having entered on the  
2 18th day of September, 1975, its proposed Findings of Fact,  
3 Conclusions of Law and Order, and the Board having served said  
4 proposed Findings, Conclusions and Order upon all parties herein  
5 by certified mail, return receipt requested and twenty days  
6 having elapsed from said service; and

7 The Board having received no exceptions to said proposed  
8 Findings, Conclusions and Order; and the Board being fully advised  
9 in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 18th day  
12 of September, 1975, and incorporated by this reference herein and  
13 attached hereto as Exhibit A, are adopted and hereby entered as the  
14 Board's Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 16<sup>th</sup> day of October, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

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19 CHRIS SMITH, Chairman

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22 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

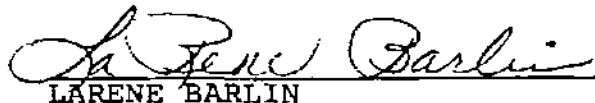
CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 16<sup>th</sup> day of October, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Ron Zylstra  
d.b.a. Zylstra Construction  
926 N.E. 176th Place  
Seattle, Washington 98155

Mr. Keith D. McGoffin  
Burkey, Marsico, Rovai, McGoffin,  
Turner and Mason  
P. O. Box 5217  
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency  
410 West Harrison Street  
Seattle, Washington 98119



LARENE BARLIN  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
RON ZYLSTRA d.b.a. ZYLSTRA )  
CONSTRUCTION, )  
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Appellant, )  
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v. )  
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PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 837

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged airborne particulate violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 5, 1975.

Appellant appeared pro se, respondent through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution  
2 Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,  
6 3d Ex. Sess., has filed with this Board a certified copy of its  
7 Regulation I containing respondent's regulations and amendments  
8 thereto.

9 II.

10 Section 9.15(a) of respondent's Regulation I makes it unlawful  
11 to cause or permit particulate matter to be handled without taking  
12 reasonable precautions to prevent the matter from becoming airborne.  
13 Section 3.29 authorizes respondent to levy a civil penalty of not  
14 more than \$250 for any violation of Regulation I.

15 III.

16 In March, 1975, appellant was under contract to remodel the  
17 City Light Building, 1015 Third Avenue, Seattle, King County.  
18 Involved in the project was the demolition of interior walls on  
19 the second floor and the removal of resultant rubble. Appellant  
20 obtained the required municipal permit to enable appellant to dump  
21 the rubble outside a second-floor window to a dumpster parked at  
22 the curbing below.

23 Appellant, noticing the operation caused particulates (dust)  
24 to become airborne, tried several methods to control the dust. He  
25 was prevented by City Light from wetting the rubble inside the  
26 building for fear of damage to the floor. About one-half of the

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 rubble was removed during weekends to minimize the effect of  
2 the airborne dust.

3 Appellant, fearing the adverse effects of a slurry which  
4 might run down the hill street on which the dumpster was parked,  
5 did not attempt the exterior use of water to dampen the dust.

6 IV.

7 The use of exterior water--at least a brief, experimental use  
8 of same--was a reasonable precaution which appellant failed to  
9 utilize.

10 V.

11 On March 19, 1975, an inspector on respondent's staff saw  
12 the dust becoming airborne. He caused respondent to serve appellant  
13 with Notice of Violation No. 10024, citing Section 9.15 of  
14 respondent's Regulation I, and subsequently, in connection therewith,  
15 Notice of Civil Penalty No. 1986 in the sum of \$100, which is the  
16 subject of this appeal.

17 VI.

18 After serving the citation on appellant, the inspector  
19 suggested that appellant surround the dumping area with tarpaulins.  
20 Appellant immediately complied. Testimony is disputed (a) as to  
21 whether this was the first use of tarpaulins or whether it was a  
22 rearrangement of tarpaulins already in use and (b) whether the use  
23 (or rearrangement) of tarpaulins improved matters.

24 VII.

25 Any Conclusion of Law hereinafter stated which is deemed to  
26 be a Finding of Fact is adopted herewith as same.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 From these facts, the Pollution Control Hearings Board comes  
2 to these

3 CONCLUSIONS OF LAW

4 I.

5 While appellant made earnest efforts to minimize and control  
6 the dust from his difficult operation, he failed to at least  
7 experiment with the use of exterior water to dampen the dust. This  
8 constitutes at least a minor failure to use "reasonable precautions"  
9 and, thus, places him in violation of respondent's Regulation I as  
10 cited in Notice of Violation No. 10024.

11 II.

12 Notice of Civil Penalty No. 1986, being two-fifths of the  
13 maximum allowable amount, is reasonable, but immediate payment of  
14 that amount should not be required. Testimony is not convincing relative  
15 to the tarpaulins. Appellant's violation was not flagrant; the penalty  
16 payment should be lessened.

17 III.

18 Any Finding of Fact herein which is deemed to be a Conclusion  
19 of Law is adopted herewith as same.

20 Therefore, the Pollution Control Hearings Board issues this

21 ORDER

22 The appeal is denied, Notice of Civil Penalty No. 1986  
23 is sustained in the sum of \$100, but immediate payment of only  
24 \$25 is directed; the balance of \$75 is suspended pending no  
25 similar violation for three months from the date this order becomes  
26 final.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 18<sup>th</sup> day of September, 1975.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith  
4 CHRIS SMITH, Chairman

5 Walt Woodward  
6 WALT WOODWARD, Member  
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27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER